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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,332	04/20/2004	Charles Henry Lederer IV	4822-0102P	2928

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

POPE, DARYL C

ART UNIT	PAPER NUMBER
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2612

NOTIFICATION DATE	DELIVERY MODE
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04/27/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/827,332	Applicant(s) LEDERER, CHARLES HENRY	
	Examiner DARYL C. POPE	Art Unit 2612	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

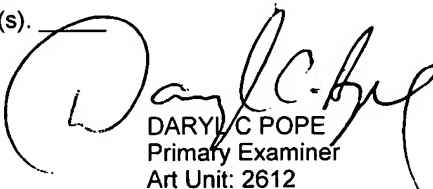
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 7, 13-17 and 29.
Claim(s) objected to: _____.
Claim(s) rejected: 2-6, 8-10 and 30.
Claim(s) withdrawn from consideration: 20-28.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See: Response to arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).
13. ☐ Other: _____.


DARYL C. POPE
Primary Examiner
Art Unit: 2612

Response to Arguments

1. Applicant's arguments filed 2/7/2007 have been fully considered but they are not persuasive.

APPLICANT'S ARGUMENTS:

1) *"Initially, Applicant respectfully submits that, because Welch discloses such a comprehensive system.....Applicant's claimed combination of features is not obvious to one of ordinary skill in the art".*

2) *"Claim 2 positively recites a combination of features wherein each of said plurality of speakers is volume controlled to be independently adjusted to cause the audible alarm to have a substantially constant volume level throughout a specified work area of the building.....So even if it one of ordinary skill in the art were properly motivated to turn to Matheny to modify Welch, the resultant modification of Welch would not result in, or otherwise render obvious, the claimed invention."*

3) *"Moreover, Applicant respectfully submits that one of ordinary skill in the art would not be properly motivated to modify Welch in view of Matheny in this regard.....Welch monitoring alerts at a central location from many patients while Matheny does just the opposite, i.e., alerts many individuals from a central location."*

4) *"Further, with respect to claim 30, the Office Action does not explain what one of Matheny's zones not being alerted and a different zone being alerted has to do with the claimed invention.....Appears to create one or more loud noises in one part of an area while not creating any noise in another part of that area."*

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5) *"Further, with respect to claim 4, Welch does not disclose or suggest that the audible alarm is provided with several different tones.....All that is presented is speculation not supported by objective factual evidence required by the aforementioned case law."*

EXAMINER'S RESPONSE:

1) Applicant is arguing that since Welch is silent with regards to the features set in claim 3, that those features must not be obvious. However, the fact that no one has gotten a patent on this specific combination of features does not necessarily mean that is not obvious. It merely means that no one has gotten a patent on this combination. The reason why might be, simply, because the combination is obvious.

2) Applicant is arguing that the combination of Welch in view of Matheny do not read on the subject matter of claim 2 which recites that the plurality of speakers are volume controlled to be independently adjusted to cause audible alarms to have a substantially constant volume level throughout a specified work area of a building. The examiner brought in the reference of Matheny to satisfy this deficiency which is not taught in Welch. As stated in the Office action, Matheny, at column 3, lines 31-37, teaches that mounted to each bed in the dormitory, are speakers which emit audible alarms to specified personnel. Without being specifically stated, this suggests that each of the speakers are independently adjusted based on that particular personnel that are to be alerted for particular corresponding alarms. Furthermore, Matheny goes on to state that the volume levels of the alarms are adjustable and as well have day and night volume levels. This clearly reads on the applicant's claimed subject matter since this

suggests that different speakers are independently controlled and that the particular controlled speakers would have emitted a constant volume level for the particular area that would have been alerted. In view of this, applicant's arguments are not deemed persuasive.

3) Applicant is paraphrasing the intent of the present invention, the wording of which has not been imputed into the claims. Furthermore, Welch and Matheny clearly teach the same field of endeavor since they both teach modification of audible alarms to alert specific personnel.

4) The entire purpose of the reference to Matheny is independent volume control for the purpose of alerting only specified personnel without disturbing other personnel. The fact that different zones are alerted clearly teaches independent volume control of independent speaker devices. It appears that the applicant expects a word for word recitation of claimed subject matter in order for prior art to read on claimed subject matter. However, it is not necessary that references actually suggest, expressly or in so many words, the changes or improvements that applicant has made. The test for obviousness is what a reference would have suggested to one of ordinary skill in the art. As stated above and in the previous office action, the examiner has pointed out reasoning and as well suggestion by the references that independent speaker volume control is taught by the prior art of record in a manner that reads on the claimed subject matter.

5) Applicant is trying to discredit the use of the reference to Smith by stating that use of the PLD would not necessarily allow generation of the claimed sounds of the

present invention. But Smith specifically defined the term "digital synthesis" so as to show that either the simplest or most complex sounds and sound patterns may be generated by the PLD as desired. How can applicant argue that a device such as the PLD of Smith would not have been able to recreate claimed alarm sounds? Applicant is arguing that the PLD might not generate the claimed sound, but the examiner deems that one of ordinary skill in the art would have been able to readily adapt the PLD to create claimed alarm sounds. In view of this, applicant's arguments are not deemed persuasive.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARYL C. POPE whose telephone number is 571-272-2959. The examiner can normally be reached on M-TH 9:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, DANIEL WU can be reached on 571-272-2964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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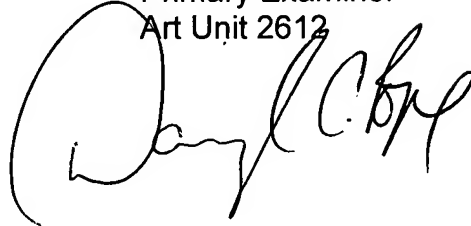
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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Daryl C. Pope

April 22, 2007

DARYL C POPE
Primary Examiner
Art Unit 2612

A handwritten signature in black ink, appearing to read "Daryl C. Pope", is written over the printed name and title.